



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

STATEMENT OF THE HONORABLE THOMAS H. MOORE
ON THE REQUEST FROM THE FASHION JEWELRY TRADE ASSOCIATION, ET AL
FOR EXCLUSION FROM LEAD CONTENT LIMITS UNDER SECTION 101(b)(1) OF THE
CONSUMER PRODUCT SAFETY IMPROVEMENT ACT OF 2008

July 17, 2009

During the consideration of the lead ban in both the House and Senate versions of what later became the Consumer Product Safety Improvement Act of 2008 (CPSIA), the issue of whether lead crystal should be excluded from the lead ban was discussed. The House Report from the Committee on Energy and Commerce accompanying H.R. 4040 stated the following: "Paragraph (4) authorizes the CPSC, in very narrow circumstances, to exclude, by rule, certain materials and products from the total lead weight limits. The lead content in these materials must be in a form that will not result in absorption of any lead whatsoever into the human body or have any adverse effect on public health or safety. The Committee understands that one such material may be lead crystal because of its molecular structure, but the CPSC must make that determination by rule. The CPSC would also have to determine if other materials meet this strict standard, including for example, certain gemstones."

The Senate accepted an amendment to its bill during floor debate that would have given the Commission the ability to specifically exempt lead crystal from the lead ban provided the Commission could determine that the lead content in the lead crystal would neither result in the absorption of lead into the human body nor have an adverse impact on public health and safety.

The provision ultimately adopted by the Conference Committee makes no mention of lead crystal but did incorporate the concept from the House Committee report that not "any" absorption of lead would be tolerated. As I indicated in my statement accompanying my vote on March 3, 2009, on the Final Rule on Procedures and Requirements for a Commission Determination or Exclusion with Regard to Children's Products Containing Lead, I must conclude that Congress intended section 101(b)(1) to be a very narrowly construed exception that does not allow for any absorption of lead into a child's body. The House Report language leaves open the possibility that after scientific investigation, the Commission might conclude that there would be no material or product, not even lead crystal, which would meet the exclusion criteria. Our scientists have concluded that while the absorption into a child's body of the lead in lead crystal is likely to be very small, there will still be some absorption and, thus, I cannot vote to exclude lead crystal from the lead ban pursuant to section 101(b)(1).

I am, however, cognizant of the need for the Commission to prioritize the use of its limited compliance resources, particularly in light of the many new mandates and prohibitions in the CPSIA. One factor the Commission has always used to direct its enforcement activities is

the relative severity of the hazards that the agency must address. In the context of the hazard presented by lead in lead crystals, it makes sense to me to focus our enforcement actions on products *designed or intended primarily* for the age group that is most likely to ingest or mouth lead crystal objects. Based on our staff's analysis, that would be children six years of age and younger. This would focus agency resources on the children who are most physiologically vulnerable to exposure from lead and on the children most likely to mouth and ingest lead crystals. The petitioners also identified mouthing and ingestion as the worst case scenarios. Manufacturers, importers, distributors, retailers and resellers should direct their attention to children's jewelry, children's clothing and other items containing lead crystal designed or intended primarily for children six years of age and younger and make sure these products are not available for purchase by consumers. I am voting today to direct our enforcement staff to focus their activities on these products.

A few states, such as California, allow lead crystals in children's jewelry for this age group, provided the weight of the crystals does not exceed one gram. The California policy is based on a court settlement. While such a result is appropriate in the context in which it was agreed to, it is difficult to find a basis to allow similar enforcement discretion under federal law. The one gram limit was predicated on a type of risk analysis that the CPSIA has deemed to not be protective enough of the nation's children. To allow this exception to our enforcement activities is simply not supportable under the strict standards of the CPSIA.